

issued the notice of deficiency, which offer satisfies the requirements of paragraphs (c)(3), (4), (5) and (6) of this section. This is the only written offer made by F during the administrative or court proceeding, and by its terms it is to remain open for a period in excess of 90 days after the date of mailing to the office issuing the notice of deficiency. The office that issued the notice of deficiency transmitted the offer to the field attorney with jurisdiction over the Tax Court case. After answering the case, the field attorney refers the case to Appeals pursuant to Rev. Proc. 87-24 (1987-1 C.B. 720). After careful consideration, Appeals rejects the offer and holds a conference with F where some adjustments are settled. The remainder of the adjustments are tried in the Tax Court and F's liability resulting from the Tax Court's determinations, when added to F's liability resulting from the settled adjustments, is less than F's liability would have been under the offer rejected by Appeals. Because the Tax Court case had not yet been answered when the offer was sent, F properly mailed the offer to the office that issued the notice of deficiency. Thus, F's offer satisfied the requirements of paragraph (c)(2) of this section. Furthermore, even though F did not receive a 30-day letter, F's offer was made after the beginning of the qualified offer period, satisfying the requirements of paragraph (c)(7) of this section, because the issuance of the statutory notice provided F with notice of the Internal Revenue Service's determination of a deficiency, and the docking of the case provided F with an opportunity for administrative review in the Internal Revenue Service Office of Appeals under Rev. Proc. 87-24 (1987-1 C.B. 720). Because F's offer satisfied all of the requirements of paragraph (c) of this section, the offer was a qualified offer and F is a prevailing party.

Example 11. Last qualified offer. Assume the same facts as in *Example 10* except that at the Appeals conference F makes a new qualified offer concerning the remaining issues. Because this subsequent qualified offer is closer in time to the end of the qualified offer period than the offer made one day after the petition was filed, the subsequent offer would be the last qualified offer made by F and it is F's liability under this offer which would be compared to F's liability under the judgment to determine whether F was a prevailing party under the qualified offer rule.

Example 12. Substitution of parties permitted under last qualified offer. Taxpayer G receives a 30-day letter and participates in a conference with the Office of Appeals but no agreement is reached. Subsequently, G receives a notice of deficiency and petitions the Tax Court. Upon receiving the Internal Revenue Service's answer to the petition, G sends a qualified offer to the field attorney

that signed the answer, by United States mail. The qualified offer stated that it would remain open for more than 90 days. Thirty days after making the offer, G dies and, on motion under Rule 63(a) of the Tax Court's Rules of Practice and Procedure by G's personal representative, H is substituted for G as a party in the Tax Court proceeding. H makes no qualified offers to settle the case and the case proceeds to trial, with the Tax Court issuing an opinion partially in favor of H. Even though H was not a party when the qualified offer was made, that offer constitutes a qualified offer because by its terms, when made, it was to remain open until at least the earlier of the date it is rejected, the date of trial, or 90 days. If the liability of H under that last qualified offer, as determined under paragraph (b)(2) of this section, equals or exceeds the liability under the judgment of the Tax Court, as determined under paragraph (b)(3) of this section, H will be a prevailing party for purposes of an award of reasonable litigation costs under section 7430.

(f) *Effective date.* This section is applicable with respect to qualified offers made in administrative or court proceedings described in section 7430 after January 3, 2001 and before January 5, 2004.

[66 FR 726, Jan. 4, 2001]

§ 301.7430-8 Administrative costs incurred in damage actions for violations of section 362 or 524 of the Bankruptcy Code.

(a) *In general.* The Internal Revenue Service may grant a taxpayer's request for recovery of reasonable administrative costs incurred in connection with the administrative proceeding before the Internal Revenue Service relating to the willful violation of section 362 or 524 of the Bankruptcy Code only if the taxpayer is a prevailing party.

(b) *Prevailing party.* A taxpayer is a prevailing party for purposes of this section only if—

(1) The taxpayer satisfies the net worth and size limitations in paragraph (f) of § 301.7430-5;

(2) The taxpayer establishes that in connection with the collection of his or her federal tax an officer or employee of the Internal Revenue Service has willfully violated a provision of section 362 or 524 of the Bankruptcy Code; and

(3) The position of the Internal Revenue Service in the proceeding was not substantially justified.

§ 301.7432-1

(c) *Administrative proceeding.* For purposes of this section, an administrative proceeding is a proceeding related to an administrative claim presented to the Internal Revenue Service seeking relief from a violation of section 362 or 524 of the Bankruptcy Code by the Internal Revenue Service or recovery of damages from the Internal Revenue Service under § 301.7433-2(e).

(d) *Costs incurred after filing of bankruptcy petition.* Administrative costs may be recovered only if incurred on or after the date of filing of the bankruptcy petition that formed the basis for the stay on collection under Bankruptcy Code section 362 or the discharge injunction under Bankruptcy Code section 524, as the case might be.

(e) *Time for filing claim for administrative costs.* (1) For purposes of this section, the taxpayer must file a claim for administrative costs before the Internal Revenue Service not later than 90 days after the date the Internal Revenue Service mails to the taxpayer, or otherwise notifies the taxpayer of, the decision regarding the claim for relief from or damages relating to a violation of the collection stay or the discharge injunction.

(2) If the Internal Revenue Service denies the claim for administrative costs in whole or in part, the taxpayer must file a petition with the Bankruptcy Court for administrative costs no later than 90 days after the date on which the denial of the claim for administrative costs is mailed, or otherwise furnished, to the taxpayer. If the Internal Revenue Service does not respond on the merits to a request by the taxpayer for an award of reasonable administrative costs within six months after such request is filed, the Internal Revenue Service's failure to respond may be considered by the taxpayer as a denial of an award of reasonable administrative costs.

(3) For purposes of paragraphs (e)(1) and (2) of this section, if the 90th day falls on a Saturday, Sunday, or a legal holiday, the 90-day period shall end on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. The term legal holiday means a legal holiday in the District of Columbia. If the request for costs is to be filed with the Internal Revenue Service at an office of the Internal Revenue Service located outside the District of Columbia, the term legal holiday

26 CFR Ch. I (4-1-03 Edition)

also means a statewide legal holiday in the state where such office is located.

(f) *Effective date.* This section is applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998.

[T.D. 9050, 68 FR 14320, Mar. 25, 2003]

§ 301.7432-1 Civil cause of action for failure to release a lien.

(a) *In general.* If any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release a lien on property of the taxpayer in accordance with section 6325 of the Internal Revenue Code, such taxpayer may bring a civil action for damages against the United States in federal district court. The total amount of damages recoverable is the sum of:

(1) The actual, direct economic damages sustained by the taxpayer which, but for the officer's or the employee's knowing or negligent failure to release the lien under section 6325, would not have been sustained; and

(2) Costs of the action.

The amount of actual, direct economic damages that are recoverable is reduced to the extent such damages reasonably could have been mitigated by the plaintiff. An action for damages filed in federal district court may not be maintained unless the taxpayer has filed an administrative claim pursuant to paragraph (f) of this section and has waited the period required under paragraph (e) of this section.

(b) *Finding of satisfaction or unenforceability.* For purposes of this section, a finding under section 6325(a)(1) that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable is treated as made on the earlier of:

(1) The date on which the district director of the district in which the taxpayer currently resides or the district in which the lien was filed finds full satisfaction or legal unenforceability; or

(2) The date on which such district director receives a request for a certificate of release of lien in accordance with § 401.6325-1(f), together with any